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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 594

UNION PACIFIC RAILROAD COMPANY, A CORPORATION; CITY OF KANSAS CITY, KANSAS; DON C. McCOMBS, FRANCIS BLAKE AND GEORGE T. DARBY, COMMISSIONERS, ETC., ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.,

Appellees.

MOTION TO CORRECT DIMINUTION OF THE RECORD.

WILLIAM E. KEMP,
HALE HOUTS,
LESLIE A. WELCH,
ANDREW C. SCOTT,
ROLAND J. LEHMAN,
JOHN N. METTEITH,
CHRISTOPHER B. GARNETT,
JONATHAN C. GIBSON,

Counsel for City of Kansas City, Missouri; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company; Guy A. Thompson, Trustee of Missouri Pacific Railroad Company; Chicago, Burlington & Quincy Railroad Company; and The Atchison, Topeka and Santa Fe Railway Company, Appellees.

April 9, 1940.

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Appellants,

vs.

THE UNITED STATES OF AMERICA, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.,

Appellees.

MOTION TO CORRECT DIMINUTION OF THE RECORD.

Come now the City of Kansas City, Missouri; The Atchison, Topeka and Santa Fe Railway Company; Chicago, Burlington & Quincy Railroad Company; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of The Chicago, Rock Island & Pacific Railway Company; and Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, a part of the appellees in the above entitled cause; and move this Court to correct diminution of the record (as provided by Rule 17 of the rules of this Court) and for an order requiring the Clerk of the District Court of the

United States for the Western District of Missouri, to certify to this Court the following documents:

Document.	*Date Filed.*
Statement of Defendants Kansas City, Kansas, and its Defendant Officers Made as Required by the Fourth Paragraph of Temporary Injunction Order of the Court dated April 10, 1940	April 25, 1940
Affidavit of James H. Barnes	May 16, 1940
Affidavit of James H. Barnes	June 17, 1940

which were omitted from the record in the above entitled cause on file in this Court, and for grounds hereof state as follows:

I.

For the first time in this proceeding appellants contend in their brief on file in this Court that, "Frequent references throughout the Court's findings to 'free and reduce rentals' are without foundation. * * * Under these circumstances the provisions of the City's lease cannot be distorted into any proposal of either 'free or reduced' rental." (Appellants' brief, pages 229-230.)

II.

The District Court in its order granting preliminary injunction filed April 10, 1940 (page 288 of record filed in this Court) provided, among other things, "Fourth, the defendant City of Kansas City, Kansas, shall file with the Clerk of this Court on or before the 28th day of April, 1940, a written statement showing all payments made by tenants occupying facilities at the Food Terminal, and shall thereafter on or before the 15th day of each and every month during the pendency of this action file a like statement for the preceding calendar month."

III.

Pursuant to this order the City of Kansas City, Kansas, filed with the District Court an affidavit sworn to on June 15, 1940, by James H. Barnes, in which he stated that a very small percentage of the rental due had been collected, and in which the following statement appears:

> "That according to the affiant's information, the checks were paid on the basis of 40% of completion; that said buildings have been completed and have been accepted as completed by the City, a fact which every occupant of the Kansas City, Kansas Food Terminal is well aware."

IV.

That said James H. Barnes, for the City of Kansas City, Kansas, in pursuance of the order above referred to, filed affidavits of similar import on April 25, 1940, and May 16, 1940. All of these reports were filed prior to the issuance of the order granting permanent injunction on July 13, 1940.

V.

Copies of said affidavits which were filed with the District Court are attached hereto and made a part of this motion.

Respectfully submitted,

WILLIAM E. KEMP,
HALE HOUTS,
LESLIE A. WELCH,
ANDREW C. SCOTT,
ROLAND J. LEHMAN,
JOHN N. MONTEITH,
CHRISTOPHER B. GARNETT,
JONATHAN C. GIBSON,
Attorneys for Above-Named Appellees.

April 9, 1941.

DISTRICT OF COLUMBIA, ss:

John N. Monteith, being duly sworn, deposes and says that he is attorney for The Atchison, Topeka and Santa Fe Railway Company and his name is signed to the foregoing motion; that he has read the motion, knows the contents thereof, and that he knows them to be true.

JOHN N. MONTEITH.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 9th day of April, 1941.

ELIZABETH LAMBDEN.

My commission expires September 14, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION.

Civil Action No. 440.

UNITED STATES OF AMERICA, ET AL., *Plaintiffs*,

vs.

UNION PACIFIC RAILROAD COMPANY, ET AL., *Defendants*.

Statement of Defendants, Kansas City, Kansas, and Its Defendant Officers, Made As Required by the Fourth Paragraph of the Temporary Injunction Order of the Court Dated April 10, 1940.

Comes now the defendant City of Kansas City, Kansas, and its defendant officers, in compliance with the order of the court made and entered the 10th day of April, 1940, and shows to the court that all payments by tenants occupying facilities in the Food Terminal are set forth in the verified statement of Charles I. McIntyre, Deputy City Auditor of the City of Kansas City, Kansas. A copy of said verified statement is attached hereto and marked Exhibit "A".

That all other tenants of the Kansas City Food Terminal have not made any payments of rent for the reasons set forth in the verified statement of James H. Barnes, Deputy City Attorney of the City of Kansas City, Kansas. A statement of the amount demanded of each tenant is set forth in the Barnes' statement. A copy of said verified statement is attached hereto and marked Exhibit "B".

Defendant City of Kansas City, Kansas, further shows to the court that prior to the 17th day of April, 1940, notice was served on each and every tenant in the Kansas City Food Terminal for the rent then due on units in the produce buildings, at the rate of $150.00 per month, and for office space at the rate of $1.10 per square foot per annum. Copies of said notices are attached hereto and marked Exhibits "C" and "D", respectively.

Attached hereto is a copy of letter received from Graham Cooksey, Chairman of Executive Committee, Kansas City Food Terminal Association, marked Exhibit "E".

(Signed) ALTON H. SKINNER,
Pro se.
ALTON H. SKINNER,
City Attorney.
BLAKE A. WILLIAMSON,
Special Assisting City Attorney.
JOSEPH A. LYNCH,
Deputy City Attorney.
JAMES H. BARNES,
Assistant City Attorney.
Attorneys for the City of Kansas City, Kansas, and its defendant officers.

EXHIBIT "A".

Statement of Defendant City of Kansas City, Kansas, Showing Payments Made by Tenants Occupying Facilities of the Food Terminal, Up to and Including April 23, 1940.

Tenants	*Unit No.*	*Sq. Ft.*	*Amount*	*Totals*
U. S. Army Engineers	358-60-62-64-66 68-70-72-74-76	2,421	601.34	
Western Union Telegraph Co.	329	354	65.00	
Pacific Fruit Express Co.	363-65-67	1,062	97.35	
Metcalf-Hamilton Construction Co.	350-52	530	48.60	
The Kansas City Industrial Land Co.	351-53-55-57	1,416	309.85	
Postal Telegraph Co.	321	354	88.95	1,211.09
City Ice & Fuel Co. (Cold Storage Plant)				80,000.00
Total				$81,211.09

STATE OF KANSAS,
County of Wyandotte, ss:

I, C. I. McIntyre, being duly sworn on oath, depose and state:

I am the duly appointed, qualified and acting Deputy City Auditor of the City of Kansas City, Kansas; that the above and foregoing statements of payments of rent made by tenants occupying facilities at the Food Terminal, is a true and correct statement of all rents received by the City of Kansas City, Kansas, from such tenants of the Kansas City Food Terminal.

(Signed) C. I. McITYRE.

Subscribed in my presence and sworn to before me, a Notary Public, within and for the County and State aforesaid, this 25 day of April, 1940.

(Signed) JESSIE DUNLAP,
Notary Public.

My commission expires December 26, 1943.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION

Civil Action No. 440.

UNITED STATES OF AMERICA, ET AL., *Plaintiffs,*

vs.

UNION PACIFIC RAILROAD COMPANY, ET AL., *Defendants.*

Affidavit.

STATE OF KANSAS,
County of Wyandotte, ss:

JAMES H. BARNES, of lawful age, being first duly sworn upon his oath, deposes and states:

That on April 18, 1940, affiant and W. J. Nauman, Jr. were directed by the City Commissioners of Kansas City, Kansas to make demands upon the tenants of the Kansas City, Kansas Food Terminal for rent due on produce units and office rooms, from the date the tenants moved into the terminal, to April 1, 1940.

That prior to April 17, 1940, affiant had served upon the tenants of said food terminal, with the exception of two tenants whom affiant could not locate, formal written notice of the rent said tenant owed the City.

On April 18, 1940, Mr. Nauman and affiant made demand on Henry Winnick who occupies the basement of unit 204 and all of unit 206 in Building "D" of the Kansas City, Kansas Food Terminal, for $580.64 rent due the City on the units from December 4, 1939 to April 1, 1940. Mr. Winnick refused to pay the rent and stated he would not pay rent until he talked to Graham Cooksey. He stated he had some losses that he wanted to adjust with the City; that his losses were caused by the fact that there was no refrigeration in his unit, and insufficient lighting on the dock in Building "D"; that he wanted to see what

the engineers had to say about the market, referring to the engineers employed by the produce men.

Henry Baum occupies produce units 137 and 139 in Building "B", and is indebted to the City in the sum of $803.20 for the rent due on said units from January 10, 1940 to April 1, 1940, and is also indebted to the City in the sum of $145.10 for rent due for produce unit 127 in Building "B" occupied by Mr. Baum from December 11, 1939 to January 10, 1940. Affiant is uncertain of the exact date Mr. Baum moved from unit 127 to units 137 and 139, but to the best of affiant's information and belief, said date was January 10, 1940. Demand was made by Mr. Nauman and affiant upon Mr. Baum for the rent due the City on the three units. Mr. Baum stated that he had been told by Graham Cooksey and Jasper DeMarea to move into units 137 and 139 and occupy them until some other tenant was obtained for the units, and that he did not want the space because it was too large for him; and never at any time intended to occupy unit 137. He further stated he did not want to pay until he talked to Graham Cooksey and advised us to talk to Mr. Cooksey about the engineers' report. He stated that he had suffered some loss because of no ventilation and no refrigeration.

Mr. Nauman and affiant next called upon Faro D'Angelo who owns and operates the D'Angelo Celery House in unit 130 in building "A" of the Kansas City, Kansas Food Terminal. Mr. D'Angelo owes the City $580.64 in rent, that being the rent due on said unit from December 4, 1939 to April 1, 1940. Mr. Nauman and affiant made demand upon Mr. D'Angelo for the payment of rent. Mr. D'Angelo informed them that he wanted to see what the others did and if they paid he would pay; that he wanted to know about the report of the engineers; that he had no refrigeration and he had to go to the Empire Cold Storage for refrigeration and he felt the City should pay him for his losses because of no refrigeration.

Mr. Nauman and affiant next called upon Henry Fishman who operates produce unit 128 in Building "A" of the Kansas City, Kansas Food Terminal. Mr. Fishman

owes the City $566.12 rent due on said unit from December 7, 1939 to April 1, 1940. Demand was made upon Mr. Fishman for his rent. Mr. Fishman refused to pay, stating that he did not want to pay rent until he got the report of the engineers and the market men's association; that the elevator in the unit was not running for a month and a half after he moved in, and he had been unable to use his basement.

Mr. Nauman and affiant then called upon W. F. Helm who occupies units 124 and 126 in Building "A" of the Kansas City, Kansas Food Terminal and made demand on Mr. Helm for $1,161.28 rent due on said unit from December 4, 1939 to April 1, 1940. Mr. Helm stated that he understood the matter was continued until April 24, 1940, when the produce men's engineers would make their report. He understood that the rent was subject to adjustment because of the unfinished condition of the units. He stated that he would pay the rent due after the Judge passed on the engineers' report on utilization.

Mr. Nauman and affiant then called upon Sam Litman who occupies unit 116 in Building "A" of the Kansas City, Kansas Food Terminal. Mr. Litman owes the City $580.64 rent due on said unit from December 4, 1939 to April 1, 1940. Mr. Litman stated that he would not pay rent until the engineers' estimate of the percent of completion was passed on by the Judge. At the same time affiant made demand upon Mr. Litman and presented him with the same formal notice presented the other tenants of the produce units for the payment of rent upon units 234 and 236 in Building "D" of the Kansas City, Kansas Food Terminal. It had come to affiant's attention that about the 1st of January, 1940, Mr. Litman had opened units 234 and 236 and was apparently using them for the purpose of storage; that to affiant's knowledge Mr. Litman never conducted his business out of these units but he did use them and exercised control over them for the purpose of storing some of his produce. The extent the units were used for storage is not known to affiant. Affiant does not know the exact day that Mr. Litman started to use said units, but by inquiry and to the best of his ability,

sets that day at January 1, 1940, and made demand on Mr. Litman for the payment of rent on said units from January 1, 1940 to April 1, 1940, or for $900.00. Mr. Litman refused to accept the notice and stated that he had never used said units for the purpose of conducting his business, but the only use he had ever made of them was for light storage.

Mr. Nauman and affiant then called on Harry Winer, who occupies units 112 and 114 in Building "A" at the Kansas City, Kansas Food Terminal and made demand on Mr. Winer for $1,161.28 rent on said units from December 4, 1939 to April 1, 1940. Mr. Winer refused to pay the rent, stating that he would not make any payments until the Judge hears from the produce men's engineers; that he had suffered a large loss because he moved into the units before they were completed. Affiant states that at the time he and Mr. Nauman called on Mr. Winer, the unit was 100% complete except for the refrigeration.

Mr. Nauman and affiant then called upon Louis Mallin who occupies units 108 and 110 in Building "A" at the Kansas City, Kansas Food Terminal, and made demand on him for $1,161.28 in rent due the City, this representing the rental on said units from December 4, 1939 to April 1, 1940. Mr. Mallin stated that after the engineers had checked the units and the Judge had passed upon the amount of utilization, he would pay his rent to date; that the only thing he was short was refrigeration; that outside of that, at the time we called his unit was complete.

Mr. Nauman and affiant then called upon Don Palermo who occupies unit 101 in Building "B" and made demand upon Palermo for $580.64 rental for the unit, that being the rent due on said unit from December 4, 1939 to April 1, 1940. Mr. Palermo refused to pay the rent. He stated that he had suffered so much damage that he would have to have an adjustment with the City before he paid the rent. He stated that he had no refrigeration, his basement leaked, there had been an open place in the roof in the Arcade, and there was no paving on the tracks in the rear of Building "B".

Mr. Nauman and affiant then talked to Roy Watrous who occupies unit 107 in Building "B" of the Kansas City, Kansas Food Terminal and made demand upon Mr. Watrous for $580.64, that being the amount due for rent on said unit from December 4, 1939 to April 1, 1940. Mr. Watrous stated that he would not pay rent until the City adjusted his loss resulting from no refrigeration, wet basement, hole in Arcade roof, and incomplete unit.

Mr. Nauman and affiant then called upon Tony Gargotta who occupies unit 113 in Building "B" of the Kansas City, Kansas Food Terminal, and made demand upon Mr. Gargotta for $580.64 rent due the City for the occupancy of said unit from December 4, 1939 to April 1, 1940. Mr. Gargotta stated that he was not going to pay the City rent until the City had adjusted his losses; that he had no refrigeration; that the basement was very wet; that at the time he moved into the unit it was represented to him that the unit was complete; and as a result of the incomplete condition of the building and the unit, he suffered a loss.

Mr. Nauman and affiant then called upon William Walinov who occupies unit 117 in Building "B" of the Kansas City, Kansas Food Terminal, and made demand on Mr. Walinov for $580.64 rent due on said unit from December 4, 1939 to April 1, 1940. Mr. Walinov claimed that the amount he was asking in rent was too high and that he did not want to pay the rent until his losses were adjusted; that during the months of January and February there was a large hole in the roof of the Arcade above his unit, and as a result he was compelled to close the inside doors of the unit and his business was seriously hampered; he also complained of no refrigeration and wet basement.

Affiant states that while he and Mr. Nauman were talking to Mr. Watrous, Jack Pack who occupies unit 119 in Building "B" of the Kansas City, Kansas Food Terminal, overheard the conversation and stated that his situation was identical with that of Mr. Walinov's and that he wanted some adjustments. We made demand on Mr. Pack for $532.24, said amount being the amount due as rental on said unit 119 from December 14, 1939 to April 1, 1940.

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Affiant states that on Friday, April 19, 1940, Mr. Nauman was out of the city and for that reason no further demand was made on that day. On Saturday, April 20, 1940, affiant left the city and nothing was done on that day. On Monday, April 22, 1940, Mr. Nauman again being absent from the city, affiant continued alone to make the demands for rental.

Affiant states that he made demand on Jim Pisciotta, who, to affiant's belief, is in charge of unit 132 of the Kansas City, Kansas Food Terminal, said unit being occupied by the Pisciotta Fruit & Vegetable Company, for $580.64, that being the amount due the City for rent for said unit from December 4, 1939 to April 1, 1940. Jim Pisciotta stated he could not say anything about the rent; that Phil Pisciotta who runs the Pisciotta Fruit & Vegetable Company was out of the city and would not be back until April 23rd; the only thing he could say about the unit was that it was not complete.

Affiant further states that he then talked to Harry Robinson who occupies units 100 and 102 in Building "A" on the Kansas City, Kansas Food Terminal, and who owes the City $1,161.00 rental on said units from December 4, 1939 to April 1, 1940. Mr. Robinson states that he had talked to the produce men's engineers and that he did not want to pay the rent until he had heard from the engineers' report.

Affiant further states that he then talked to Hyman Widlansky or Hyman Widlan who occupies unit 104 in Building "A" in the Kansas City, Kansas Food Terminal, and who owes the City $580.64 rent on the unit from December 4, 1939 to April 1, 1940. Mr. Widlan stated that whatever the rest of them did he would do. He wanted to wait on the engineers' report before he paid any rent.

Affiant further states that he then talked to Tony Lombardo, who, with his brother, Joe Lombardo, occupies unit 105 in Building "B" of the Kansas City, Kansas, Food Terminal, and who owes the City $464.52 rent on said unit from December 28, 1939 to April 1, 1940. Tony Lombardo stated that he had no money with which to pay rent and could not pay rent.

Affiant further states that he then talked to Herman Loe, representative of the National Produce Company, who formerly occupied unit 118 in Building "A" of the Kansas City, Kansas Food Terminal, and informed Mr. Loe that the National Produce Company was indebted to the City for rent on said unit from December 4, 1939 to April 16, 1940, in the sum of $—. Mr. Loe informed affiant that he would have to take up the matter of the rental of the unit and the rent due, with Mr. Robinson, the owner of the National Produce Company. Mr. Loe had come onto the terminal for the purpose of turning over the keys of the National Produce Company to some person employed by the City.

Affiant further states that Louis Gordon who formerly occupied unit 115 in Building "B" of the Kansas City, Kansas, Food Terminal, has moved, and for that reason affiant could not make demand upon him.

Affiant further states that Sol Junsberg, who occupies the upper part of unit 204 has filed a motion in regard to his rents in this case, and for that reason demand was not made upon him. Affiant talked to Mr. Junsberg's attorney, Mr. Charlies Snyder, and was informed by Mr. Snyder that after the court passed upon the motion the matter of payment of rent to the City would be settled.

Affiant further states that on April 22, 1940, affiant talked to Graham Cooksey who occupies room 301 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, and made demand upon Mr. Cooksey for $181.70 rent due on said suites of rooms from December 29, 1939, to April 1, 1940. Mr. Cooksey stated that he wanted to wait upon the engineers' report in regard to the completion of the building. He claimed that he had no elevator, no shades, no janitor service, no barber shop and no club rooms. Affiant informed Mr. Cooksey that Mr. Baum and Mr. Winnick had referred me to him in regard to the time they would pay their rent and he told me that they evidently referred to the executive committee and the engineers' report; that he was chairman of the market association executive committee.

Affiant further states that he then called on Martin Ungerleider who occupies room 302 on the second floor of Building

"D" of the Kansas City, Kansas Food Terminal, and made demand upon him for $107 and some odd cents, the exact amount I do not remember at this time, for rent for said room from December 29, 1939, to April 1, 1940. Mr. Ungerleider informed me that he wanted to wait for the engineers' report; that his room was not completed until February 1, 1940, and they did not stop working on the room until March 1, 1940.

Affiant further states that he called on C. V. O'Connell of the Central Brokerage Company, which occupies room 318 on the second floor of the Kansas City, Kansas Food Terminal, and made demand on him for $137.90 rent due on said room from January 5, 1940, to April 1, 1940, and he stated that he desired to wait upon the engineers' report of completion of the building.

Affiant further states that he then called upon the Postal Telegraph Company that occupies room 321 in Building "D" of the Kansas City, Kansas Food Terminal, to make demand for $88.95 rent due the City to April 1, 1940, and was referred to R. C. Gall, City Superintendent.

Affiant further states that in the original demands made for rent upon the Kansas City Industrial Land Company and Pacific Fruit Express, there was an error in the demands, and that affiant amended the error, the Kansas City Industrial Land Company claiming they did not move upon the food terminal property until the 19th day of January, 1940, and the Pacific Fruit Express having paid one month's rent for which they did not receive credit. That upon the formal written amended demand being presented to the Kansas City Industrial Land Company, Harry Higgins of the Kansas City Industrial Land Company advised affiant that the $309.85 the City claims due for rent for rooms 351-353-355-357 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, would be paid by April 25, 1940. That the affiant was advised by telephone from some person who claimed to be an authority at the Pacific Fruit Express, that if affiant would file an amended and correct demand on the Pacific Fruit Express, the rent would be paid as soon as the check could be obtained from the main office. That affiant did file an amended demand on Pacific Fruit Express for $103.75 for rent on suite 363 at the Kansas City, Kansas Food Terminal, that being the

amount of rent remaining due and unpaid on said rooms, up to April 1, 1940.

Affiant further states that he has been advised by the Western Union Telegraph Company who occupies room 329 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, that they will pay their rent immediately; that the affiant was so advised, to the best of his recollection, on April 15, 1940.

Affiant further states that on April 23, 1940, he made demand on Ike Sarser who occupies produce units 200 and 202 in Building "D" of the Kansas City, Kansas Food Terminal, for $1,161.28 rent due on the units from December 4, 1939, to April 1, 1940. Mr. Sarser refused to pay and gave for his reason that Building "D" was incomplete when he moved in and that the workmen had just stopped working on the basement of his units the 1st of April, 1940; that there had been no lights on Building "C" that lighted up Building "D", and because of the general unfinished condition of Building "D" he thought he should have a rental adjustment. He stated however, that he wanted to wait upon the engineers' report.

Affiant further states that on the same day he made demand upon Dudley Brown of Brown & Loe, occupants of room 375 on the second floor of Building "D" for $258.52, rent due on the room from December 29, 1939, to April 1, 1940. Mr. Brown stated his intention to pay the rent, dependent upon the engineers' report and the action of the rest of the market men's association. He stated that he wanted to go along with the rest of the association.

Affiant further states that he next talked to J. H. Maher of the Robinson Commission Company and made demand upon Mr. Maher for $130.10 rent due on rooms 318 and 320 from January 5th, 1940, to April 1, 1940. Mr. Maher stated that he wanted to wait on the engineers' report on the completion of the building and that when that report was in he would pay his rent based on the report.

Affiant further states that on Wednesday, April 24th, he made demand upon William Fean, manager of the Heart of America Growers Association, for $1,161.28, that being the amount of rent due on units 109 and 111 occupied by the Heart of America Growers Association from December

4, 1939, to April 1, 1940. Mr. Fean stated that he had only taken unit 111 because he had figured that he wouldn't have to pay anything but cheap rent until the farmers' season started and that he had little use for that unit; that he was not in the produce business but in the farmers' business, and for that reason he felt that he was exempt from the court ruling as to the rent, and that the Heart of America Growers Association which he represented and which really rented the unit, is a farmers' organization. Mr. Fean further stated that if he was under the ruling of the court as to the payment of rent, then he wanted to state that he wanted to have notice taken of the fact that the unit was not complete; that he had no refrigeration; that he had a damp basement; and that there had been a hole in the Arcade in front of his unit; and he felt that for those reasons he was entitled to some concessions on his rent.

Affiant further states that he then called on Dreyer and Dworak Commission Company, occupants of units 131 and 133 in Building "B" of the Kansas City, Kansas Food Terminal, and made demand on Mr. Dworak for $1,161.28, that being the amount of rent due the City on said units from December 4, 1939 to April 1, 1940. Mr. Dworak stated that he had suffered a serious loss because of the fact his unit was not completed and he had no refrigeration, had a wet basement, and that he wanted to hear from the engineers' report, and after that an attempt to adjust his rent with the City.

Affiant further states that demand was not made upon N. DeMarea & Son, former occupants of unit 120 in Building "A", for the reason that N. DeMarea & Son have moved from the food terminal.

Affiant further states that demand was not made upon Garrett Holmes, former occupant of unit 122 in Building "A" of the Kansas City, Kansas Food Terminal, for the same reason.

Affiant further states that demand was not made upon Sirchia & Ferrante, occupants of unit 121 in Building "B" of the Kansas City, Kansas Food Terminal, or upon Pepperdine & Sons, occupants of unit 123 in Building

"B" of the Kansas City, Kansas, Food Terminal, because affiant was unable to locate either tenant, and it is affiant's opinion from the appearance of the units that they have moved.

Affiant further states that on April 13, 1940 he served a written rental notice upon Robert Clark, manager of the Shefford Cheese Company who occupies unit 106 in Building "A" of the Kansas City, Kansas Food Terminal, and is indebted to the City in the sum of $600.00 rent due from December 1, 1939 to April 1, 1940; that at that time Mr. Clark told affiant that he did not owe $600.00 rent and wanted to take the matter up with the City; that affiant returned to the Shefford Cheese unit on April 24, 1940 to make a formal demand upon Mr. Clark and found the unit locked, and for that reason was unable to make demand upon Mr. Clark.

Affiant further states that on April 23, 1940, he made demand upon Carl Sandstrom for $88.95 rent due for room 327 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, that being rent due the City from January 8, 1940 for the room. Mr. Sandstrom informed affiant that he was not conducting a business in Interstate Commerce, Mr. Sandstrom being the Secretary of a grocery association and the editor of a grocery paper. Mr. Sandstrom also stated that the building had not been completed, and that he had other claims against the City that he desired to adjust before he paid his rent.

Affiant further states that on April 24, 1940 he attempted to make demand upon Guy E. Stanley, Jr., who occupies rooms 333 and 335 on the upper floor of Building "D" at the Kansas City, Kansas Food Terminal, for $182.10, that being the amount of rent due on the rooms from January 6, 1940 to April 1, 1940; that the stenographer in the office informed affiant that Mr. Stanley was out of town; that at some date between April 13, 1940 and April 24, 1940 affiant talked with Mr. Stanley about his rent and Mr. Stanley informed affiant that he was not a party to this action because he was engaged in the business of selling insurance and surety bonds. Written demand

was made upon Mr. Stanley for the payment of his rent, on April 13, 1940.

Further affiant saith not.

(Signed) JAMES H. BARNES.

Subscribed and sworn to before me this 24 day of April, 1940.

(NOTARIAL SEAL.) (Signed) JESSIE DUNLAP,
Notary Public.

My commission expires: Dec. 26, 1943.

EXHIBIT "C".

Notice and Demand.

To —— ——, Occupant of Produce Unit No. — of the Kansas City, Kansas, Food Terminal;

You are hereby notified that in accordance with an order made in the District Court of the United States for the Western Division of the Western District of Missouri, in the cause entitled, United States of America, et al., plaintiffs, *vs.* Union Pacific Railroad Company, et al., defendants, No. 440, (a copy of said order being attached to this demand for rental) the City of Kansas City, Kansas, makes demand upon you for the payment of rent for Produce Unit — on the basis of One Hundred and Fifty ($150.00) Dollars a month; you having moved into said Produce Unit on the — day of —, 19—, are now indebted to the City of Kansas City, Kansas, in the sum of $—.

Unless this rent is paid by April 17, 1940, the City will start legal action to collect the same.

By order of the Board of City Commissioners this 12th day of April, 1940.

THE CITY OF KANSAS CITY, KANSAS,
By —— ——,
Leasing Committee.

Original of the above notice served this — day of April, 1940.

Notice and Demand.

EXHIBIT "D".

To —— ——, occupant of Room No. — on second floor of "D" Building of the Kansas City, Kansas, Food Terminal:

You are hereby notified that in accordance with an Order made in the District Court of the United States for the Western Division of the Western District of Missouri, in the cause entitled, United States of America, et al., Plaintiffs, *vs.* Union Pacific Railroad Company, et al., Defendants, No. 440, (a copy of said Order being attached to this demand for rental) the City of Kansas City, Kansas, makes demand upon you for the payment of rent for Room No. — on the basis of One and 10/100 ($1.10) Dollars per square foot a year; you having moved into said rooms on the — day of —, 19—, are now indebted to the City of Kansas City, Kansas, in the sum of $—.

Unless this rent is paid by April 17, 1940, the City will start legal action to collect the same.

By order of the Board of City Commissioners this 12th day of April, 1940.

THE CITY OF KANSAS CITY, KANSAS,

By —— ——,

Leasing Committee.

Original of the above notice served this — day of April, 1940.

EXHIBIT "E".

(Copy.)

GRAHAM COOKSEY & COMPANY

Fruit Brokers

301 Brokers Building K. C. Food Terminal

Kansas City, Kansas.

April 15, 1940.

Via Registered Mail.

Don C. McCombs, Mayor, Kansas City, Kansas.

DEAR SIR:

The Kansas City Food Terminal Association, composed of the tenants in the food terminal, hereby advises you that the Notices and Demands served on tenants by the City incorrectly assumes that the buildings are substantially completed.

The tenants in the market desire and will fully comply with the order of Judge Collet and in order to do so, we have employed a disinterested firm of civil engineers to determine for us the amount and amounts actually due, if any, to the City of Kansas City, Kansas, and will make returns to you accordingly. However, we are advised that it will be impossible to complete details on April 17 and, therefore, advise you that we will let you have our replies to your demands on or before April 24 so you can file the same information with the Court on April 25.

Yours truly,

KANSAS CITY FOOD TERMINAL ASSN.,

By GRAHAM COOKSEY,

Chairman of Executive Committee.

GC:RK.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

No. 440.

UNITED STATES OF AMERICA, ET AL., *Plaintiffs*,

vs.

UNION PACIFIC RAILROAD COMPANY, ET AL., *Defendants*.

Order Granting Preliminary Injunction.

This cause came on to be heard upon application of the United States of America, City of Kansas City, Missouri, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of the Chicago, Rock Island & Pacific Railway Company, and Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, plaintiffs in said cause, for a preliminary injunction, and upon verified complaint of the United States of America, and on the verified answers of defendants, and upon the evidence introduced both by plaintiffs and defendants, and after hearing counsel for the respective parties, and memorandum opinion, findings of fact, and conclusions of law of the Court having been filed herein on March 25, 1940, and supplemental findings of fact of the Court having been filed herein on April 5th, 1940, and it appearing to this Court that the Interstate Commerce Act and the Elkins Act have been, now are being, and will be, violated by said defendants as alleged in said complaint, and that issuance of a preliminary injunction is necessary to prevent immediate and irreparable damage for the following reasons:

That at the present produce district of Kansas City, Missouri, certain produce dealers do business in a market building owned by the City of Kansas City, Missouri, and certain other produce dealers do business in privately-owned stores, offices, markets, and warehouses, some of which are owned by the produce dealers themselves and

some by other persons. The aggregate value of the buildings, public and private, devoted to buying and selling food in said produce is substantial. A great part of the value of said property would be destroyed and large losses would be visited upon the produce dealers and other property owners and upon the commerce and trade of Kansas City, Missouri, should the defendants proceed in carrying out their agreement by which the defendant produce dealers are to move their places of business to the new Kansas City Food Terminal at Kansas City, Kansas, in return for payments of cash and gifts of free rental and other things of value. Said injury would be irreparable because once the defendant produce dealers have moved away from the produce district of Kansas City, Missouri, to the new Kansas City Food Terminal at Kansas City, Kansas, it is probable that they will not assume the expense and trouble of moving back again even if at some subsequent time a return of the payments and gifts aforesaid were ordered by the Court.

The major portion of the produce bought and sold in the present produce district of Kansas City, Missouri, is transported to and from said district in interstate and foreign commerce by a number of competing railroads, including defendant Union Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Rock Island & Pacific Railway Company and Frank O. Lowden, James E. Gorman and Joseph B. Fleming, its trustees, and Missouri Pacific Railroad Company and Guy A. Thompson, its trustee. The new Kansas City Food Terminal at Kansas City, Kansas, is located solely on the lines of defendant Union Pacific Railroad Company with one exception relative to service to the cold storage plant, and said defendant has an advantage over the above-named competing lines with respect to traffic handled to or from said new terminal. If the defendant produce dealers are induced to move their places of business from the Kansas City, Missouri, terminal to the Kansas City, Kansas, terminal the result will be to divert shipments of produce traffic of such defendant produce dealers now

being transported in interstate and foreign commerce from the said competing lines to the lines of the defendant Union Pacific Railroad Company, and such diversion would cause a loss of approximately $600,000 a year to The Atchison, Topeka and Santa Fe Railway Company, a loss of approximately $110,000 a year to the Missouri Pacific Railroad Company, a loss of approximately $60,000 a year to the Chicago, Burlington & Quincy Railroad Company, and a substantial loss of revenue annually to the Chicago, Rock Island & Pacific Railway Company, and said loss and diversion will be a continuous one and one for which there is no adequate remedy at law.

It Is Ordered, Adjudged, and Decreed as follows:

First, defendants Union Pacific Railroad Company, City of Kansas City, Kansas, Don C. McCombs, Francis Blake, George T. Darby, Alton H. Skinner, Howard Payne, and Truman Schlup, and each of their respective officers, agents, attorneys, servants, and employees, and anyone acting by or through or for them, be and hereby are jointly and severally enjoined and restrained—

(1) From offering, granting or giving, or assisting, joining, or cooperating in offering, granting, or giving cash payments or rental credits, free rents and reduced rents, unsecured loans constituting concessions, or other valuable considerations to defendant produce dealers or other produce dealers, or produce brokers or other persons, firms, or corporations shipping produce by railroad in interstate commerce to move or for moving to the Kansas City Food Terminal or for leasing space or for remaining as tenants in said food terminal.

(2) From permitting defendant produce dealers or other produce dealers, or produce brokers or other persons, firms, or corporations shipping produce by railroad in interstate commerce to remain as tenants of the wholesale produce buildings at the Kansas City Food Terminal unless said produce dealers, produce brokers, or other persons, firms, or corporations (a) shall pay rental monthly hereafter for all substantially completed units at the same rate charged all other shippers occupying similar facilities and

not less than $150.00 per month per unit until further order, and (b) shall pay rental monthly for occupancy, prior to this date, of all substantially completed units at the rate of $150.00 per month for the period when such units were substantially complete, and (c) shall pay rental monthly for past, present and future occupancy (pending final determination of this cause by this Court) of units not substantially completed, at a monthly rate which is the same proportionate part of $150.00 per month which the per centum of actual utilization of those facilities bears to complete utilization of those facilities.

(3) From permitting defendant produce dealers or other produce dealers or produce brokers or other persons, firms, or corporations shipping produce by railroad in interstate commerce to remain as tenants of office space in the buildings of the Kansas City Food Terminal unless said produce dealers, brokers, or other persons, firms, or corporations (a) shall pay rental monthly hereafter for all substantially completed facilities and office space at the same rate charged all other shippers occupying similar facilities and not less than $1.10 per square foot per annum, until further order, and (b) shall pay rental monthly for occupancy prior to this date, of all substantially completed facilities and office space at the rate of $1.10 per square foot per annum for the period when such facilities were substantially complete, and (c) shall pay rental monthly for past, present and future occupancy of office space facilities (pending final determination of this cause by this Court) at a monthly rate which is the same proportionate part of $1.10 per square foot per annum which the per centum of actual utilization of those facilities bears to complete utilization of those facilities.

Second, defendants Joseph DeOreo and William Fean, and each of their agents, attorneys, servants, and employees, and anyone acting by or through or for them, be and hereby are jointly and severally enjoined and restrained—

(1) From assisting, joining, or cooperating with, defendants Union Pacific Railroad Company, City of Kansas City, Kansas, Don C. McCombs, Francis Blake, George T. Darby, Alton H. Skinner, Howard Payne, and Truman

Schlup, and each of their officers, agents, attorneys, servants, and employees, and anyone acting by or through or for them, in offering, granting, or giving to defendant produce dealers and other produce dealers or product brokers, or other persons, firms, or corporations shipping produce by railroad in interstate commerce, cash payments or rental credits, free and reduced rents, unsecured loans constituting concessions, or other valuable considerations to move or for moving to the Kansas City Food Terminal or for leasing space or for remaining as tenants in said food terminal.

Third, defendant produce dealers and each of their respective officers, agents, attorneys, servants, and employees and anyone acting by or through or for them be and hereby are jointly and severally enjoined and restrained—

(1) From soliciting, accepting, or receiving cash payments or rental credits, free and reduced rents, unsecured loans constituting concessions, or other valuable considerations from defendants Union Pacific Railroad Company, City of Kansas City, Kansas, Don C. McCombs, Francis Blake, George T. Darby, Alton H. Skinner, Howard Payne, Truman Schlup, Joseph DeOreo, and William Fean, and each of their respective officers, agents, attorneys, servants, and employees, and anyone acting by or through or for them, to move or for moving to the Kansas City Food Terminal or for leasing space or for remaining as tenants in said food terminal.

(2) From remaining as tenants of the wholesale produce buildings at the Kansas City Food Terminal, (a) without paying rental monthly hereafter for all substantially completed units at the same rate charged all other shippers occupying similar facilities and not less than $150.00 per month per unit until further order, and (b) without paying rental monthly for occupancy prior to this date, of all substantially completed units at the rate of $150.00 per month for the period when such units were substantially complete, and (c) without paying rental monthly for past, present and future occupancy (pending final determination of this cause by this Court) of units not substantially completed,

at a monthly rate which is the same proportionate part of $150.00 per month which the per centum of actual utilization of those facilities bears to complete utilization of those facilities.

(3) From remaning as tenants of office space in the buildings at the Kansas City Food Terminal, (a) without paying rental monthly hereafter for all substantially completed facilities and office space at the same rate charged all other shippers occupying similar facilities and not less than $1.10 per square foot per annum, until further order, and (b) without paying rental monthly for occupancy prior to this date, of all substantially completed facilities and office space at the rate of $1.10 per square foot per annum for the period when such facilities were substantially complete, and (c) without paying rental monthly for past, present and future occupancy of office space facilities (pending final determination of this cause by this Court) at a monthly rate which is the same proportionate part of $1.10 per square foot per annum which the per centum of actual utilization of those facilities bears to complete utilization of those facilities.

Fourth, the defendant City of Kansas City, Kansas, shall file with the Clerk of this Court on or before the 25th day of April, 1940, a written statement showing all payments made by tenants occupying facilities at the Food Terminal, and shall thereafter on or before the 15th day of each and every month during the pendency of this action file a like statement for the preceding calendar month.

It is further ordered, adjudged, and decreed that this preliminary injunction remain in full force and effect until entry of final decree in this cause and until further order of this Court.

J. C. COLLET,
District Judge.

Dated at Kansas City, Missouri, this 10th day of April, 1940.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION.

CIVIL ACTION No. 440.

UNITED STATES OF AMERICA, ET AL., *Plaintiffs*,

vs.

UNION PACIFIC RAILROAD COMPANY, A CORPORATION OF THE STATE OF UTAH, ET AL., *Defendants*.

Affidavit.

STATE OF KANSAS,
County of Wyandotte, ss:

JAMES H. BARNES, of lawful age, being first duly sworn upon his oath, deposes and states:

That he is an Assistant City Attorney of Kansas City, Kansas; that on May 2, 1940, he and William J. Nannan, Jr., were directed, as members of the market leasing committee to make demands upon the tenants of the produce buildings of the Kansas City, Kansas Food Terminal and the tenants of the office building who might possibly be connected with the produce business, for rent due the City as a result of their occupancy of the Kansas City, Kansas Food Terminal.

That on May 3, 1940, affiant made demand upon the Central Brokerage Company, occupancy of rooms 318 and 320 on the second floor of "D" Building of the Kansas City, Kansas Food Terminal, for $137.00, rent due the City to April 1, 1940, and $48.00, rent from April 1, to May 1, 1940.

That on May 3, 1940 affiant made demand upon C. H. Robinson and Company, occupants of rooms 314 and 316 on the second floor of "D" Building of the Kansas City, Kansas Food Terminal, for $130.10, rent due on the rooms to April 1, 1940, and $48.60 rent due for the month of April, 1940. Demand was made upon J. H. Maher, Manager of C. H. Robinson and Company.

That on May 3, 1940 affiant made demand upon Graham Cooksey, occupant of rooms 301, 303 and 305 on the

second floor of "D" Building of the Kansas City, Kansas Food Terminal for $187.70, rent due for said rooms to April 1, 1940, and the sum of $61.87 rent due for the month of April, 1940.

That on May 3, 1940, affiant made demand upon Henry Baum, occupant of unit 127 in Building "B" of the Kansas City, Kansas Food Terminal, for $146.16, rent due on said unit from December 10, 1939 to January 10, 1940.

That on May 3, 1940, affiant made demand upon Henry Baum, occupant of units 137 and 139 in Building "B" of the Kansas City, Kansas Food Terminal, for $803.20, rent due on said units to April 1, 1940, and the sum of $300 rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Faro D'Angelo, owner of the D'Angelo Celery House, which occupies unit 130 in Building "A" of the Kansas City, Kansas Food Terminal, for $586.64, rent due to April 1, 1940, and for $150, rent due for the month of April, 1940.

That on May 3, 1940, affiant made demand upon Jack DeFeo of the DeFeo Fruit Company, which occupies units 134 and 136 and 138 in Building "A" of the Kansas City, Kansas Food Terminal, for $1,741.92, in Building "A" of the Kansas City, Kansas Food Terminal, for $1,741.92, rent due to April 1, 1940, and the sum of $450, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Sol Junsberg who occupies the upper half of unit 204 in Building "C" of the Kansas City, Kansas Food Terminal, for $387.09, rent due to April 1, 1940, and $100, rent due for April, 1940.

That on May 6, 1940, affiant made demand upon Ike Sarser of the Sarser Produce Company, which occupies units 200 and 202 in Building "C" of the Kansas City, Kansas Food Terminal, for $1,161.28, rent due on said units to April 1, 1940, and for $300, rent due for April, 1940.

That on May 6, 1940, affiant made demand upon Henry Fishman who occupies unit 128 in Building "A" of the Kansas City, Kansas Food Terminal, for $566.12, rent to April 1, 1940, and $150, rent due for April, 1940.

That on May 6, 1940, affiant made demand on W. F. Helm, who occupies units 124 and 126 in Building "A" of the Kansas City, Kansas Food Terminal, for $1,161.28, rent due on said unit to April 1, 1940 and the sum of $300, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Sam Litman, for rent due on units 234 and 236 in Building "C" of the Kansas City, Kansas Food Terminal, for $900, rent due to April 1, 1940, and the sum of $300, rent due for April, 1940.

Mr. Litman contends he does not owe rent on these units for the reason that he has not conducted his business from the units. However, he has occupied the units for some sort of storage, and to affiant's knowledge knows he has made some use of the banana rooms.

That on May 3, 1940, affiant made demand upon Sam Litman, who occupies unit 116 in Building "A" of the Kansas City, Kansas Food Terminal, for $580.64, rent due to April 1, 1940, and $100, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Harry Robinson of the A. Robinson & Son Fruit Company, occupants of units 100 and 102 in Building "A" of the Kansas City, Kansas Food Terminal, for $1,161.28, rent due to April 1, 1940, and $300, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon R. J. Clark of the Shefford Cheese Company, which occupies unit 106 in Building "A" of the Kansas City, Kansas Food Terminal, for $600, rent due to April 1, 1940, and $150, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Harry Winer, who occupies units 112 and 114 in Building "A" of the Kansas City, Kansas Food Terminal, for $1,161.28, rent due to April 1, 1940, and for $300, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Martin Ungerleider who occupies rooms 300 and 302 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, for $122.26, rent due on the roofs to April 1, 1940, and for $33.37, rent due for April, 1940.

That on May 8, 1940, affiant made demand upon the Pisciotta Fruit & Vegetable Company, which occupies unit

132 in Building "A" of the Kansas City, Kansas Food Terminal, by serving a notice and demand upon Jim Pisciotta for $586.64, rent due to April 1, 1940, and for $150, rent due for April, 1940.

That on May 8, 1940, affiant made demand upon Dreyer & Dworak, occupants of units 131 and 133 in Building "B" of the Kansas City, Kansas Food Terminal, by serving notice on Joe Dworak for $1,161.28, rent due on the units to April 1, 1940, and for $300, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Winnick Bros. who occupy unit 206 and the lower half of 204 in building "C" of the Kansas City, Kansas Food Terminal, by serving a notice and demand on Henry Winnick for $580.64, rent due to April 1, 1940, and for $200, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Brown & Loe, a commission firm, by serving a notice on Thomas Loe for rent due for suite 375 on the second floor of Building "D" of the Kansas City, Kansas Food Terminal, in the sum of $258.52, rent due to April 1, 1940, and for $84.30, rent due for April, 1940.

That on May 9, 1940, demand was made upon the Heart of America Growers' Association, occupant of units 109 and 111 in Building "B" of the Kansas City, Kansas Food Terminal, by serving notice and demand upon William Fean for $1,161.28, rent due to April 1, 1940, and for $300, rent due for April, 1940.

When notice and demand was served upon the above named tenants of the Kansas City, Kansas Food Terminal, a specific request was made for the payment of rent. Affiant requested that the entire amount be paid, or if the occupant felt that there was a possibility that the court would accept the renders made, that the rent be paid for April, 1940.

The occupants were further advised by the affiant that the failure to pay rent on their part, and the failure to collect rent on the part of the City might result in a contempt of court citation for both parties. None of the tenants refused to pay rent. They all advised affiant that they did not know what to do about the rent previous to April 1, 1940, because having made a tender based upon their engineers' estimate until they heard whether the tender was accepted

they did not know what to do about their rent prior to that time. As to the rent for April, 1940, they indicated that they would make an offer of payment of rent based upon the 70% completion of the terminal facilities.

Upon failure to receive payment of rent, affiant then made demand for either the rent or the unit or the rooms as the case might be. Upon this demand being made the occupants of the produce units stated that they would attempt to pay the rent to the best of their ability, based upon completion, but beyond that could not say anything.

Affiant made demand upon J. H. Maher of C. H. Robinson and Company, C. V. O'Connell of the Central Brokerage Company, and Graham Cooksey, that they either pay the rent or vacate the premises, and upon this demand he was advised that they would have to talk the matter over with each other and with the produce men, but they did not intend to attempt to avoid paying the rent; that the rent would be paid upon the basis of completion.

That on May 8, 1940, affiant made demand upon the Postal Telegraph Company, occupant of room 321 on the second floor of "D" Building, for $32.45 rent due for the current month of April, 1940.

That on May 3, 1940, affiant made demand upon the Western Union Telegraph Company, occupant of room 329 on the second floor of "D" Building, for rent due for April, 1940.

That on May 3, 1940, affiant made demand upon the Pacific Fruit Express, occupants of suite 363 on the second floor of "D" Building of the Kansas City, Kansas Food Terminal for $103.75, rent due to April 1, 1940, and the sum of $97.35, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon the Kansas City Industrial Land Company, occupants of rooms 351, 353, 355 and 357 on the second floor of "D" Building of the Kansas City, Kansas Food Terminal, for $129.80, rent due for April, 1940.

The four above named occupants of rooms on the second floor of "D" Building have agreed to pay rent for their rooms as set out in the notice and demand.

That on May 3, 1940, affiant made demand upon Guy Stanley, Jr., occupant of rooms 333 and 335 on the second floor of "D" Building of the Kansas City, Kansas Food

Terminal, for $182.10, rent due to April 1, 1940, and for $64.90, rent due for April, 1940.

That on May 3, 1940, affiant made demand upon Carl Sandstrom, occupant of room 327 on the second floor of "D" Building of the Kansas City, Kansas Food Terminal, for $88.95, rent due to April 1, 1940, and $32.42, rent due for April, 1940.

Mr. Sandstrom and Mr. Stanley contended that they are not parties to this action, not being shippers and not being engaged in the produce business, and no promise to pay was obtained from either party.

That on May 3, 1940, affiant made demand upon William Walinov for $580.64, rent due to April 1, 1940, on unit 117 in Building "B" of the Kansas City, Kansas Food Terminal, and $150, rent due for April, 1940.

Mr. Walinov no longer occupies unit 117 and informed affiant that he was out of business, but that he was now operating or working with Don Palermo of the Missouri-Kansas Produce Company.

That on May 3, 1940, affiant made demand upon Don Paleramo of the Missouri-Kansas Produce Company who now occupies units 106 and 108*6* of the Kansas City, Kansas, Food Terminal, and had formerly occupied unit 101, for $580.64, rent due on unit 101 to April 1, 1940, and $150, rent due for April, 1940.

Mr. Palermo stated that he would do as the rest of the members of the produce units did in regard to paying his rent, meaning that he would make a tender on the basis of utilization of the terminal property.

That on May 3, 1940, affiant made demand upon Jack Pack of the Market Fruit Company, occupant of unit 119 in "B" Building of the Kansas City, Kansas, Food Terminal, for $532.24, rent due to April 1, 1940, and for $150, rent due for April, 1940.

Mr. Pack informed affiant that he would try to pay his rent.

Affiant was unable to locate Tony Gargotta, owner of the Mid-West Potato Company and occupant of unit 113 in Building "B" of the Kansas City, Kansas, Food Termi-

nal and the Lombardo Produce Company, occupant of unit 105 in Building "B" of the Kansas City, Kansas, Food Terminal, both units being closed each time affiant called to serve notice.

Affiant further states that on May 15, 1940, tender was made of the following produce merchants in the following sums: (p. 4)

Missouri-Kansas Produce Company	$ 36.00
S. Junsberg	32.00
Henry Baum	36.00
Sam Litman	60.00
William F. Helm	120.00
Henry Fishman	60.00
D'Angelo Celery House	60.00
Pisciotta Fruit & Vegetable Company	60.00
DeFeo Fruit Company	180.00
Winnick Bros.	64.00
Graham Cooksey	24.76
C. H. Robinson Company	19.44
Central Brokerage Company	19.44
Brown & Loe	42.15
H. Winer	120.00
A. Robinson & Sons Fruit Co.	100.00
Martin Ungerleider	13.35
Ike Sarser	27.20

This money was accepted by the City subject to the approval of the court.

Affiant further states that some of the checks stated, "rent in full".

Affiant further states that the checks specify rent for different dates, one check being for rent from April 15th to May 15th, 1940, one check being for rent from April 5th to May 5th, 1940, one check being for the May rent; and that affiant, disregarding the dates or statements on the checks, accepted the checks as a tender of rent at the Kansas City, Kansas, Food Terminal, and disregarded at the time of the acceptance, any date specified on the checks for

the reason the checks were accepted by affiant in answer to the demands for rent from April 1 to May 1, 1940.

Further affiant saith not.

(Signed) JAMES H. BARNES.

Subscribed in my presence and sworn to before me, a notary public within and for the county and state aforesaid, this 16 day of May, 1940.

(Signed) JESSIE DUNLAP,
Notary Public. (SEAL.)

My commission expires Dec. 26, 1943.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

No. 440.

UNITED STATES OF AMERICA, ET AL., *Plaintiffs*,

vs.

UNION PACIFIC RAILROAD COMPANY, ET AL., *Defendants*.

AFFIDAVIT OF JAMES H. BARNES.

STATE OF KANSAS,
County of Wyandotte, ss:

James H. Barnes, of lawful age, being first duly sworn upon his oath, states:

That on June 11th, 1940, affiant and W. J. Nauman, Jr., the leasing committee of the Kansas City, Kansas, Food Terminal, served the following rental notices, making demand for rent due to June 1, 1940:

To Brown & Loe and Dudley Brown, notice for $427.12, rent due on room 375 on the second floor of "D" building; notice served on Miss Piper, in charge of the office.

To Ike Sarser, notice for $1,761.28, rent due on units 200 and 204 in "D" building; notice served on Sam Yagan.

To DeFeo Fruit Co., notice for $2,642.92, rent due on units 136, 137 and 138 in "A" building; notice served on Charley DeFeo, partner.

To Henry Fishman, notice for $866.12, rent due on unit 129 in "A" building; notice served on Henry Fishman, Jr.

To Pacific Fruit Express, notice for $97.35, rent due on room 363 on the second floor of "D" building; notice served on Fred Winkley, Assistant Office Superintendent.

To Kansas City Industrial Land Co., notice for $129.80, rent due on rooms 351, 353, 355 and 357 on the second floor of "D" building; notice served on W. A. Judd, in charge of office.

To Guy E. Stanley, Jr., notice for $311.90, rent due on rooms 333 and 335 on the second floor of "D" building; notice served on Doris Williams, in charge of office.

To Carl Sandstrom, notice for $153.85, rent due on room 327 on the second floor of "D" building; notice served on Carl Sandstrom.

To C. H. Robinson & Co., notice for $227.30, rent due on rooms 314 and 316 on the second floor of "D" building; notice served on J. H. Maher, manager.

To Graham Cooksey, notice for $311.44, rent due on rooms 301, 303 and 305 on the second floor of "D" building; notice served on Graham Cooksey.

To Central Brokerage Co., notice for $226.30, rent due on rooms 318 and 320 on the second floor of "D" building; notice served on T. L. Kenworthy, assistant manager.

To Martin Ungerleider, notice for $189.00, rent due on room 302 on the second floor of "D" building; notice served on Mrs. Martin Ungerleider.

To H. Winder Produce Co., notice for $1,761.28, rent due on units 112 and 114 in "A" building; notice served on Harry Winder.

To Don Palermo, notice for $300.00, rent due on units 108 and 110 in "A" building; notice served on Joe Walinov.

To Don Palermo, notice for $730.64, rent due on unit 101 in "B" building; served on Joe Walinov.

Affiant further states that he did not go to the market on June 12, 1940, and upon that day he was informed by W. J. Nauman, Jr., that Mr. Nauman served the following notices:

To Henry Baum, notice for $1,303.35, rent due on units 137 and 139 in "B" building; notice served on G. Katz, in charge of units.

To Henry Baum, notice for $145.16, rent due on unit 127 in "B" building; notice served on G. Katz, in charge of Henry Baum Commission Co.

To Litman Produce Co., notice for $1,200.00, rent due on units 234 and 236 in "D" building; notice served on A. Denton, manager.

To Litman Produce Co., notice for $880.00, rent due on unit 116 in "A" building; notice served on A. Denton, manager.

Affiant further states that on June 14, 1940, notice was served on Dreyer & Dworak notifying them that they owed the City $1,761.28, rent due to June 1, 1940, on units 131 and 133 in "B" building; notice served on Mr. Aldrich, in charge of the units.

Affiant further states that in response to the notices served he has received the following checks:

C. H. Robinson & Co.	$19.44
Central Brokerage Co.	19.44
Brown & Loe	42.15
Graham Cooksey	24.76

Affiant further states said checks were accepted by the City, subject to the approval of the court.

That according to the affiant's information, the checks were paid on the basis of 40% of completion; that said buildings have been completed and have been accepted as completed by the City, a fact which every occupant of the Kansas City, Kansas Food Terminal is well aware.

Further affiant saith not.

(Signed) JAMES H. BARNES.

Subscribed and sworn to before me this 15th day of June, 1940.

(Signed) JOSEPH A. LYNCH,
Notary Public.

(SEAL)

My commission expires May 28, 1940.

(Filed June 17, 1940.)

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